

AMENDED IN ASSEMBLY MARCH 31, 2005

CALIFORNIA LEGISLATURE—2005–06 REGULAR SESSION

ASSEMBLY BILL

No. 552

Introduced by Assembly Member La Suer

February 16, 2005

An act to amend ~~Section~~ Sections 8616.5 and 8617 of the Business and Professions Code, relating to structural pest control.

LEGISLATIVE COUNSEL'S DIGEST

AB 552, as amended, La Suer. Structural pest control.

Under existing law, the Structural Pest Control Board licenses and regulates persons engaged in structural pest control. Existing law requires the county agricultural commissioner to be the lead agency for inspections and routine investigations of pesticide use.

This bill would make a nonsubstantive change to these provisions.

Existing law authorizes the board or county agricultural commissioners to suspend, fine, or direct a structural pest control licensee to attend and pass a board-approved course of instruction when a licensee violates laws and regulations regarding pesticide use. Existing law requires the licensee to be given notice of the proposed action for a violation.

This bill would require the notice of the proposed action to be sent within 60 days of the initial notice of violation. The bill would also provide that if the proposed action is not taken within 90 days after specified dates, the citation shall be dismissed with prejudice.

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~-yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

SECTION 1. Section 8616.5 of the Business and Professions Code is amended to read:

8616.5. (a) The county agricultural commissioner shall be the lead agency for inspections and routine investigations of pesticide use by board licensees and registered companies, and of persons engaged in unlicensed structural pest control. When a matter is referred to the board for action, the board shall be the lead agency and may require that the commissioner assist in any investigation.

(b) The board and the Director of Pesticide Regulation shall jointly develop the list of the types of investigations to be conducted by the commissioner that may result in the suspension of a license or company registration, or the imposition of a fine, pursuant to Section 8617 and the list of the types of violations that the commissioner shall refer to the board for disciplinary action.

(c) As used in subdivision (a), the term “routine investigations” means all investigations of pesticide misuse by a board licensee or registered company except (1) investigation of misuse incidents that are referred to the board for disciplinary action or that are the basis for county actions to suspend or fine structural pest control licensees or registered companies in accordance with the lists promulgated pursuant to subdivision (b), or (2) any investigation performed by the county agricultural commissioner that has been requested by the board and involves exclusively a violation of this code.

SEC. 2. Section 8617 of the Business and Professions Code is amended to read:

8617. (a) The board or county agricultural commissioners, when acting pursuant to Section 8616.4, may suspend the right of a structural pest control licensee or registered company to work in a county for up to three working days or, for a licensee, registered company, or an unlicensed individual acting as a licensee, may levy an administrative fine up to one thousand dollars (\$1,000) or direct the licensee to attend and pass a board-approved course of instruction at a cost not to exceed the administrative fine, or both, for each violation of this chapter, or Chapter 14.5, or any regulations adopted pursuant to these

1 chapters, or Chapter 2 (commencing with Section 12751),
 2 Chapter 3 (commencing with Section 14001), Chapter 3.5
 3 (commencing with Section 14101), or Chapter 7 (commencing
 4 with Section 15201) of Division 7 of the Food and Agricultural
 5 Code, or any regulations adopted pursuant to those chapters,
 6 relating to pesticides. However, any violation determined by the
 7 board or the commissioner to be a serious violation as defined in
 8 Section 1922 of Title 16 of the California Code of Regulations
 9 shall be subject to a fine of not more than five thousand dollars
 10 (\$5,000) for each violation. Fines collected shall be paid to the
 11 Education and Enforcement Account in the Structural Pest
 12 Control Education and Enforcement Fund. Suspension may
 13 include all or part of the registered company's business within
 14 the county based on the nature of the violation, but shall,
 15 whenever possible, be restricted to that portion of a registered
 16 company's business in a county that was in violation.

17 (b) A licensee who passes a course pursuant to this section
 18 shall not be awarded continuing education credit for that course.

19 (c) Before a suspension action is taken, a fine levied, or a
 20 licensee is required to attend and pass a board-approved course
 21 of instruction, the person charged with the violation shall be
 22 provided a written notice of the proposed action, including the
 23 nature of the violation, the amount of the proposed fine or
 24 suspension, or the requirement to attend and pass a
 25 board-approved course of instruction. The notice of proposed
 26 action shall inform the person charged with the violation that if
 27 he or she desires a hearing before the commissioner issuing the
 28 proposed action to contest the finding of a violation, that hearing
 29 shall be requested by written notice to the commissioner within
 30 20 days of the date of receipt of the written notice of proposed
 31 action.

32 A notice of the proposed action ~~that is sent~~ shall be sent within
 33 60 days of the initial notice of violation by certified mail to the
 34 last known address of the person charged. *The notice* shall be
 35 considered received even if delivery is refused or the notice is not
 36 accepted at that address.

37 If a hearing is requested, notice of the time and place of the
 38 hearing shall be given at least 10 days before the date set for the
 39 hearing. At the hearing, the person shall be given an opportunity
 40 to review the commissioner's evidence and a right to present

1 evidence on his or her own behalf. If a hearing is not requested
2 within the prescribed time, the commissioner may take the action
3 proposed without a hearing. *If a hearing is not requested and the*
4 *proposed action is not taken within 90 days of the initial notice of*
5 *violation, the citation shall be dismissed with prejudice.*

6 (d) If the person upon whom the commissioner imposed a fine
7 or suspension or required attendance at a board-approved course
8 of instruction requested and appeared at a hearing before the
9 commissioner, the person may appeal the commissioner's
10 decision to the Disciplinary Review Committee and shall be
11 subject to the procedures in Section 8662.

12 (e) If a suspension or fine is ordered, it may not take effect
13 until 20 days after the date of the commissioner's decision if no
14 appeal is filed. If an appeal pursuant to Section 8662 is filed, the
15 commissioner's order shall be stayed until 30 days after the
16 Disciplinary Review Committee has ruled on the appeal.

17 (f) Failure of a licensee or registered company to pay a fine
18 within 30 days of the date of assessment or to comply with the
19 order of suspension, unless the citation is being appealed, may
20 result in disciplinary action being taken by the board.

21 Where a citation containing a fine is issued to a licensee and it
22 is not contested or the time to appeal the citation has expired and
23 the fine is not paid, the full amount of the assessed fine shall be
24 added to the fee for renewal of that license. A license shall not be
25 renewed without payment of the renewal fee and fine.

26 Where a citation containing a fine is issued to a registered
27 company and it is not contested or the time to appeal the citation
28 has expired and the fine is not paid, the board shall not sell to the
29 registered company any inspection stamps, notice of completion
30 stamps, or pesticide use stamps until the assessed fine has been
31 paid.

32 Where a citation containing the requirement that a licensee
33 attend and pass a board-approved course of instruction is not
34 contested or the time to appeal the citation has expired and the
35 licensee has not attended and passed the required board-approved
36 course of instruction, the licensee's license shall not be renewed
37 without proof of attendance and passage of the required
38 board-approved course of instruction.

39 (g) Once final action pursuant to this section is taken, no other
40 administrative or civil action may be taken by any state

1 governmental agency for the same violation. However, action
2 taken pursuant to this section may be used by the board as
3 evidence of prior discipline, and multiple local actions may be
4 the basis for statewide disciplinary action by the board pursuant
5 to Section 8620. A certified copy of the order of suspension or
6 fine issued pursuant to this section or Section 8662 shall
7 constitute conclusive evidence of the occurrence of the violation.

8 (h) Where the board is the party issuing the notice of proposed
9 action to suspend or impose a fine pursuant to subdivision (a) of
10 this section, “commissioner” as used in subdivisions (c), (d), and
11 (e) includes the board’s registrar.

12 (i) *After a hearing and the time to file an appeal has expired,*
13 *if the proposed action is not taken within 90 days, the citation*
14 *shall be dismissed with prejudice.*